

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,  
UNITED STATES SENATE

1. **Name:** Full name (include any former names used).

Consuelo Maria Callahan

Also used:

Connie Maria Callahan  
Connie M. Callahan  
Connie Callahan

2. **Position:** State the position for which you have been nominated.

United States Circuit Judge for the United States Court of Appeals for the Ninth Circuit.

3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.

Court of Appeal (State of California)  
Third Appellate District  
914 Capitol Mall  
Sacramento, California 95814  
916.654.0234

4. **Birthplace:** State date and place of birth.

June 9, 1950  
Palo Alto, California

5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.

Married. Spouse: Randy C. Haight

Supervisory Special Agent  
Bureau of Alcohol, Tobacco and Firearms (ATF)  
San Francisco Field Division  
San Francisco Group IV  
221 Main Street, Suite 1250  
San Francisco, California 94105

I have no dependent children.

6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

University of Virginia School of Law  
6/02 to Present  
LLM – Judicial Process  
(To be awarded upon completion - 2004)

McGeorge School of Law  
University of the Pacific  
8/72 to 5/75  
JD - May 31, 1975

Leland Stanford Junior University  
9/68 to 6/72  
AB – Honors English - June 11, 1972

7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Associate Justice  
Court of Appeal State of California  
Third Appellate District  
914 Capitol Mall  
Sacramento, California 95814

Associate Justice (Pro Tem)  
State of California  
Supreme Court  
350 McAllister Street  
San Francisco, California 94102  
Artiglio v. Corning Inc.  
18 Cal. 4<sup>th</sup> 604

Judge  
State of California  
Superior Court San Joaquin County  
222 E. Weber Avenue  
Stockton, California 95202

Court Commissioner  
Municipal Court of Stockton  
San Joaquin County  
222 E. Weber Avenue  
Stockton, California 95202

Supervisory District Attorney  
San Joaquin County District Attorney's Office  
222 E. Weber Avenue, Room 202  
Stockton, California 95202

Deputy District Attorney  
San Joaquin County District Attorney's Office  
222 E. Weber Avenue, Room 202  
Stockton, California 95202

Deputy City Attorney  
City of Stockton  
425 N. El Dorado Street  
Stockton, California 95202

Law Clerk – City Attorney's Office  
City of Stockton  
425 N. El Dorado Street  
Stockton, California 95202

Legal Intern  
Sacramento County  
Public Defender's Office  
700 H Street  
Sacramento, California 95814

McGeorge School of Law Alumni Board  
1999 to present

California Judges Association Executive Board  
1995 to 1996 and 1999 to 2002

San Joaquin County Child Abuse Prevention Council Board  
1987 to 1993

8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

None.

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Moot Court Finalist  
 San Joaquin County Juvenile Justice Commission,  
 Award for work in the field of child abuse/sexual assault  
 Commission on the Status of Women,  
 Susan B. Anthony Award – Woman of Achievement  
 San Joaquin County Mediation Center, Peacemaker of the Year  
 San Joaquin County Law Day Award Recipient  
 Action of Behalf of Children (ABC) – Stockton,  
 Child Advocate Award  
 Induction into the Stockton Mexican-American Hall of Fame

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Women Lawyers of San Joaquin County  
 Treasurer and Board of Governors, 1980 to 1986

San Joaquin County Bar Association  
 Board of Governors, 1983 to 1985

Judicial Council of California  
 Executive Legislative Action Network, 1994 to 1996

California Judges Association  
 Executive Board  
 1995 to 1996 (Trial Court Representative)  
 1999 to 2002 (Appellate Court Representative)

11. **Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

State of California  
All courts of California  
United States District Court, Eastern District  
December 1975  
(No lapses in membership)

12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

McGeorge School of Law  
Alumni Board, 1999 to present  
Secretary, 2001; Vice-President, 2002; and President, 2003

Anthony M. Kennedy Inn of Court  
Member/Master of the Bench, 1997 to present  
Inn President, 2000 to present

California Judges Association  
Executive Board, 1995 to 1996 and 1999 to 2002

Rotary International  
Downtown Stockton Chapter, 1993 to 1997  
Prior to my membership in Rotary International, this was a men-only service organization.

Yosemite Club  
Stockton, California  
Member, 1993 to 1997  
Prior to my membership in the Yosemite Club of Stockton, it was a men-only private club.

San Joaquin County Child Abuse Prevention Council  
Board Member, 1987 to 1993  
President, 1992 to 1993

13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

In 1973 I authored a recruitment brochure entitled, "Women in Law" for the McGeorge School of Law. No copy available.

I am not a frequent public speaker. I recall giving the following speeches:

- 1) Keynote speaker for California Women Lawyers at a one day seminar – "How to Become a Judge," 2/23/02, Sacramento, California;
- 2) Speech to Women Lawyers of Sacramento – "Retention Elections," 5/24/01, Sacramento, California;
- 3) Keynote speaker for the Association of Police Training Officers – "Changes in the Legal Landscape: The Need for Ethics and Civility in the Workplace," 10/11/00, Sacramento, California;
- 4) Keynote speaker at the Diversity Forum, University of the Pacific, "Personal Success and Success in the Workplace," 4/23/99, Stockton, California;
- 5) Keynote speaker for McGeorge School of Law, Dean's Counsel – "The Value of My McGeorge Education," 6/9/98, Sacramento, California;
- 6) Keynote address to graduates of the Criminal Justice Program at California State University – "A 25 Year Retrospective on the Courts and Law Enforcement," 4/25/98, Sacramento, California;
- 7) Graduation speech, Humphreys School of Law (Inspirational theme)– 5/97, Stockton, California.

To my knowledge, none of my speeches was audio or video tape recorded. I do not have an actual text of any of my speeches. I have provided outlines of the subject matter I intended to cover in these speeches. I cannot be certain that I covered all outline points. I generally allow questions where time permits. I have no specific recollection of any of the questions asked and answers given. I have attached an article discussing the content of the 5/24/01 speech on retention elections in lieu of an outline.

I have also attached written material that I helped prepare for three different legal education programs occurring in April 1999, September 1999, and January 2002. In all three programs there were co-instructors. The materials contain summaries of law and cases that were relevant to the topics being discussed.

1) The April 1999 materials were part of a Continuing Legal Education (CLE) Program on the Court of Appeal and appellate practice. This program was done with Jay-Allen Eisen, a certified appellate specialist.

2) The September 1999 program was a "Civil Law Update" presented at a research attorney's conference. This program was done with Justice Haller and Justice Wiseman, California Court of Appeal justices.

3) The January 2002 program was a Continuing Legal Education Program held at McGeorge School of Law. The panel was composed of legal scholars, lawyers, and one judge.

14. **Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

None.

15. **Health:** Describe the present state of your health and provide the date of your last physical examination.

Excellent  
November, 2002

16. Citations: If you are or have been a judge, provide:

- (a) a short summary and citations for the ten (10) most significant opinions you have written;
1. People v. Carmony (2002) 99 Cal.App.4th 317.  
Review denied August 28, 2002.

## SUMMARY

Defendant, who had been sentenced to prison after being convicted of sexual offenses against minors and was scheduled for release on parole, became the subject of proceedings under the Sexually Violent Predators Act (SVPA; Welf. & Inst. Code, § 6600 et seq.). At the time of his convictions, he had been determined not to be a mentally disordered offender. In the SVPA proceedings, the trial court admitted two psychological evaluations that were based on interviews with defendant and that supported a finding that defendant was a sexually violent predator. Defendant's expert disagreed with those evaluations. The trial court found beyond a reasonable doubt that defendant was a sexually violent predator. (Superior Court of Sacramento County, No. 61422, Morrison C. England, Jr., Judge.)

The Court of Appeal affirmed. It held that litigation of the issue of defendant's mental health was not barred by the doctrine of collateral estoppel, despite the earlier determination that he was not a mentally disordered offender. The different purposes and procedural settings of the Mentally Disordered Sex Offenders Act (former Welf. & Inst. Code, § 6300 et seq.) and the SVPA required litigation of defendant's current mental condition in the SVPA proceedings. The court further held that the trial court did not err in admitting the two psychological reports that became the basis for the SVPA petition, even though defendant received no advance notice that he was being evaluated as a sexually violent predator and did not have assistance of counsel before proceeding with the interviews. The transfer of a prison inmate to a mental hospital for involuntary treatment is a deprivation of liberty that requires due process protection appropriate to the circumstances.

However, nothing in the SVPA suggests that the Legislature intended to require notice or representation by counsel before the petition is requested or filed, and due process does not require such notice or representation. (Opinion by Callahan, J., with Scotland, P. J., and Davis, J., concurring.)

People v. Carmony 99 Cal.App.4th 317 (Cal.App.3.Dist.,2002).



2. Simmons v. Allstate Ins. Co. (2001) 92 Cal.App.4th 1068.

#### SUMMARY

The trial court, after striking defendants' cross-complaint under the provisions of the anti-SLAPP (strategic lawsuit against public participation) statute (Code Civ. Proc., § 425.16), denied defendants' request to amend the cross-complaint to remove any allegations that might be objectionable under the anti-SLAPP statute. (Superior Court of Sacramento County, No. 99AS03379, John R. Lewis, Judge.)

The Court of Appeal affirmed. The court held that the trial court properly denied defendants' request to amend. The anti-SLAPP statute makes no provision for amending the complaint once the trial court finds the requisite connection to protected speech, and none should be implied. Allowing a SLAPP plaintiff leave to amend the complaint once the trial court finds the prima facie showing has been met would completely undermine the statute by providing the pleader a ready escape from section 425.16's quick dismissal remedy. This would totally frustrate the Legislature's objective of providing a quick and inexpensive method of unmasking and dismissing such suits. (Opinion by Callahan, J., with Nicholson, Acting P. J., and Raye, J., concurring.)

Simmons v. Allstate Ins. Co. 92 Cal.App.4th 1068 (Cal. App.3.Dist.,2001).

3. Adams v. Aerojet-General Corp. (2001) 86 Cal.App.4th 1324.  
Review denied May 16, 2001.

#### SUMMARY

The trial court, in a toxic waste disposal action filed by property owners against a corporation, granted defendant's motion to disqualify plaintiffs' attorney on the ground that, while he was a member, his former law firm had represented defendant in a similar action (Rules Prof. Conduct, rule 3-310(E)). Invoking the rule that knowledge acquired by one member of a firm of lawyers is imputed to all members of the firm, the trial court ruled that the knowledge acquired by the attorney's former partners about defendant must be imputed to him.

The trial court also found there was a substantial relationship between the subject matter of the prior representation and the present suit, and it ruled that there was a conclusive presumption that confidential information passed to the attorney as a partner in his former firm. (Superior Court of Sacramento County, No. 98AS01025, John R. Lewis, Judge.)

The Court of Appeal reversed and remanded for further proceedings. The court held that the trial court abused its discretion in disqualifying plaintiffs' attorney, since disqualification was based not on a particularized analysis of the attorney's relationship to defendant while at his former firm, but on a conclusive presumption derived from the attorney's mere membership in the former firm. On remand, the trial court should focus not only on the relationship between the attorney and the former firm's representation of defendant, but on whether the attorney's responsibilities as partner and principal, as well as his relationship with other members of the firm, placed him in a position where he was reasonably likely to have obtained confidential information relating to the current case. The court also held that a rule that disqualifies an attorney based on imputed knowledge derived solely from his or her membership in the former firm and without inquiry into his or her actual exposure to the former client's secrets is inconsistent with the language and core purpose of Rules Professional Conduct, rule 3-310(E), and unnecessarily restricts both the client's right to chosen counsel and the attorney's freedom of association. (Opinion by Callahan, J., with Kolkey, J., concurring. Concurring and dissenting opinion by Scotland, P. J.)

Adams v. Aerojet-General Corp. 86 Cal.App.4th 1324 (Cal.App.3.Dist.,2001).

4. Wise v. Thrifty Payless, Inc. (2000) 83 Cal.App.4th 1296.

#### SUMMARY

A woman filed an action against a drugstore, alleging that while she was in the midst of an acrimonious separation from her former husband, defendant, wrongfully and without plaintiff's authorization, disclosed to her former husband in the form of billing printouts sensitive, private, and confidential information regarding plaintiff's medications and treatments, which her former husband used against her in their dissolution action and in a Department of Motor Vehicles (DMV) investigation. The trial court denied defendant's pretrial motion in limine to prohibit plaintiff or any of her witnesses from making any reference to damages or loss suffered by her as the result of her husband's use of the drug printout in either the dissolution action or in DMV proceedings, on the ground such disclosure was protected by the litigation privilege (Civ. Code, § 47, subd. (b)).

The jury returned a verdict for plaintiff. (Superior Court of Placer County, No. SCV6827, J. Richard Couzens, Judge.)

The Court of Appeal affirmed. The court held that although the former husband's use of the information was absolutely privileged, defendant's own tortious conduct was not. Non-participants and non-

litigants to judicial proceedings are never protected from liability under Civil Code section 47, subdivision (b). Defendant's disclosure did not satisfy any of the elements of the privilege: (1) it was not made in the course of judicial or quasi-judicial proceedings; (2) defendant was not a litigant or other participant authorized by law; (3) the disclosure was not made to further the object of litigation (defendant was told the information was for tax purposes); and (4) there was no logical relation to any ongoing or contemplated legal proceeding. (Opinion by Callahan, J., with Nicholson, Acting P. J., and Hull, J., concurring.)

Wise v. Thrifty Payless, Inc. 83 Cal.App.4th 1296 (Cal.App.3.Dist.,2000).

5. Mack v. Soung (2000) 80 Cal.App.4th 966.  
Review denied August 23, 2000.

#### SUMMARY

The surviving children of an elderly woman who had died in a nursing home brought an action for violation of the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15600 et seq.) and for intentional infliction of emotional distress against their mother's former physician.

The trial court sustained demurrers to both causes of action without leave to amend. Plaintiffs alleged that defendant concealed the existence of the decedent's serious bed sore, opposed her medically necessary hospitalization, and then withdrew from her care while she was dying. (Superior Court of San Joaquin County, No. CV001511, Sandra Butler Smith, Judge.)

The Court of Appeal affirmed the judgment as to the ruling regarding the intentional infliction of emotional distress cause of action, and reversed as to the ruling on the elder abuse cause of action, remanding to the trial court with directions to enter a new order overruling the demurrer as to that cause of action only. The court held that the trial court abused its discretion in sustaining defendant's demurrer to the elder abuse cause of action, since a liberal construction of plaintiffs' pleadings disclosed a course of conduct that constituted elder abuse in the form of medical neglect under the act (Welf. & Inst. Code, § 15610.07). The court further held that it is not only nursing care custodians, but also health care providers, who are subject to liability under the act if their misconduct rises to the level of neglect, abuse, or abandonment. (Opinion by Callahan, J., with Scotland, P. J., and Nicholson, J., concurring.)

Mack v. Soung 80 Cal.App.4th 966 (Cal.App.3.Dist.,2000).

6. In re Conservatorship of Gregory (2000) 80 Cal.App.4th 514.  
 As modified on denial of rehearing May 30, 2000.  
 Review denied August 23, 2000.

#### SUMMARY

A nursing home resident brought an action against the nursing home alleging elder abuse under the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15600 et seq.), and other causes of action, arising from plaintiff's injury in a fall. The trial court instructed the jury on elder abuse, based on Welfare and Institutions Code section 15610.07 (definition of abuse of elder or dependent adult), and based on state and federal regulations. The jury returned verdicts in favor of plaintiff. (Superior Court of Siskiyou County, No. 53756, James E. Kleaver, Judge. [FN] )

(FN)Retired judge of the Siskiyou Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

The Court of Appeal affirmed the judgment in plaintiff's favor. In addition, for reasons stated in the unpublished portion of the opinion, the court reversed the trial court's order concerning plaintiff's request for fees and costs to the extent the order denied plaintiff compensation for paralegal fees, remanded the matter for further proceedings, and affirmed the order in all other respects. The court held that the trial court's instructions on elder abuse were not incorrect for omitting the definitions of physical abuse and neglect contained in Welfare and Institutions Code sections 15610.57 and 15610.63. The court held that defendants waived the right to such an instruction by failing to request it at trial, but that the instructions were correct in any event, and they did not mislead the jury. The court also held that the trial court did not err in reading the jury instructions that were based on state and federal regulations. An administrative agency cannot independently impose a duty of care if the Legislature has not delegated that authority to the agency. However, the regulations at issue were authorized by federal and state legislation, and thus they could be used to describe the care required under an existing statutory right of action for elder abuse. The court further held that the trial court's instructions based on state and federal regulations were not too vague to provide meaningful guidance to the jury. (Opinion by Callahan, J., with Scotland, P. J., and Blease, J., concurring.)

In re Conservatorship of Gregory 80 Cal.App.4th 514  
 (Cal.App.3.Dist.,2000).

7. Pulaski v. California Occupational Safety and Health Standards Board (1999)  
75 Cal.App.4th 1315. As modified on denial of rehearing on  
November 24, 1999.

#### SUMMARY

The California Occupational Safety and Health Standards Board adopted standards for ergonomics in the workplace designed to minimize the instances of repetitive motion injuries (RMI) (Cal. Code Regs., tit. 8, § 5110), pursuant to the legislative mandate of Labor Code section 6357. Labor and employer groups filed petitions for writs of mandate arguing for invalidation of various portions of California Code of Regulations, title 8, section 5110. The trial court granted a writ of mandate requiring the board to refrain from enforcing the following portions of the regulations it found invalid: the exemption for small businesses; the requirement that the RMI's be predominantly caused by a work-related repetitive motion task; the requirement that a licensed physician objectively identify and diagnose the RMI's; and the safe harbor provision, protecting an employer that undertook good faith measures designed to minimize RMI's. (Superior Court of Sacramento County, No. 95CS00362, James Timothy Ford, Judge.)

The Court of Appeal reversed the judgment and remanded to the trial court. The court held that substantial evidence supported the trial court's findings that the board, in enacting California Code of Regulations, title 8, section 5110, substantially complied with requirements of the Administrative Procedure Act (Gov. Code, § 11340 et seq.). The court also held that the trial court abused its discretion in striking California Code of Regulations, title 8, section 5110, subdivision (c) (safe harbor provision), since the record showed that provision was not irrational, arbitrary, or in excess of the board's rulemaking authority. The court also held that the trial court abused its discretion in invalidating the portion of California Code of Regulations, title 8, section 5110, subdivision (a)(1), that imposed a requirement that the RMI's be predominantly caused by a work-related repetitive motion task, given the problematic nature of identifying RMI's as work-related. The court also held that the trial court abused its discretion in invalidating the provision that called for objective identification of an RMI by a physician, since that provision was a reasoned response to the lack of scientific consensus on the cause-effect relationship between RMI's and repetitive tasks in the workplace. The court also held that the trial court did not err in striking the provision that exempted small businesses from the regulations, since that exemption was inherently inconsistent with Labor Code section 6357, by which the

Legislature intended to impose upon the board the responsibility to promulgate standards for minimizing RMTs in all places of employment. (Opinion by Callahan, J., with Scotland, P. J., and Davis, J., concurring.)  
Pulaski v. California Occupational Safety and Health Standards Board, 75 Cal.App.4th 1315 (Cal.App.3.Dist.,1999).

8. Clemente v. Amundson (1998) 60 Cal.App.4th 1094.

#### SUMMARY

The trial court denied plaintiffs' petition for a writ of mandate to compel the Department of Developmental Services (DDS), its director, and a regional center to set aside a DDS administrative hearing decision authorizing parental co-payment for in-home respite services, defined as intermittent or regularly scheduled temporary non-medical care and supervision provided in the client's own home, for a regional center client who resides with a family member (Welf. & Inst. Code, § 4690.2, subd. (a)). (Superior Court of Sacramento County, No. 95CS02843, Thomas M. Cecil, Judge.)

The Court of Appeal reversed with directions. The court held that the regional center could not impose a parental co-payment for respite services in the absence of express statutory authorization, and the Legislature did not expressly authorize the co-payment in the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, §§ 4500-4905). Welfare and Institutions Code section 4685 identifies respite and day care as separate types of assistance available to families caring for developmentally disabled children at home, but expressly authorizes parental co-payment only for day care. Had the Legislature intended to assess a co-payment for respite services it had every opportunity to do so in the 1992 amendment that added co-payment for day care. The vague language of the Legislature's directive in Welfare and Institutions Code section 4791, subdivision (c), that regional centers seek "alternative sources of payment for services" could not be read to authorize co-payment for respite services. Also, the DDS and its director had no authority to issue a policy that authorized regional centers to establish service standards requiring a parental co-payment for any service purchased for the minor or the minor's family if that service was similar to a service a child without a disability would need. (Opinion by Callahan, J., with Puglia, P. J., and Davis, J., concurring.)

Clemente v. Amundson 60 Cal.App.4th 1094  
 (Cal.App.3.Dist.,1998).

9. Connerly v. State Personnel Bd. (2001) 92 Cal.App.4th 16.

#### SUMMARY

The Governor brought an action challenging five statutory affirmative action programs as violative of equal protection principles and Proposition 209 (Cal. Const., art. I, § 31). The statutes in question were Government Code section 8880.32 (State Lottery Commission), Government Code section 16850 et seq. (sale of state bonds), Government Code section 19790 et seq. (state civil service), Education Code section 87100 et seq. (community colleges), and Public Contract Code section 10115 et seq. (state contracting). A private citizen was permitted to join the lawsuit, and he continued the litigation after the Governor left office. The trial court found invalid a portion of the statutory scheme relating to the sale of bonds and all of the statutory scheme applicable to state contracting, but otherwise rejected plaintiff's constitutional challenges. (Superior Court of Sacramento County, No. 96CS01082, Lloyd Connelly, Judge.)

The Court of Appeal reversed and remanded to the trial court with directions to enter a judgment consistent with the Court of Appeal's conclusions.

The court held that under taxpayer and citizen standing rules, the private citizen had standing to maintain the suit. It held that the statutory scheme applicable to the state lottery was invalid, and that the scheme applicable to the sale of government bonds was also invalid, but that a portion of the data collection and reporting requirements of that scheme was severable and could be upheld. The court further held that the statutory scheme applicable to the state civil service was partially invalid, but that the remainder of the scheme could be severed and upheld. The statutory scheme applicable to the community colleges was invalid, the court held, and a portion of the data collection and reporting requirements of the scheme relating to state contracting was severable from the invalid portions and could be upheld. (Opinion by Scotland, P. J., with Morrison and Callahan, JJ., concurring.)

Connerly v. State Personnel Bd. 92 Cal.App.4th 16  
(Cal.App.3.Dist.,2001).

10. Catholic Charities of Sacramento, Inc. v. Superior Court (2001)  
90 Cal.App.4th 425, review granted September 26, 2001 (S099822).

#### SUMMARY

A religion-based social services corporation filed an action against the state seeking declaratory and injunctive relief, challenging the

constitutionality of state statutes that require employers that provide health insurance prescription coverage to include coverage for contraceptives (Health & Saf. Code, § 1367.25; Ins. Code, § 10123.196). Because plaintiff provided social services without regard to religious affiliation and the majority of its employees did not subscribe to its religious tenets, the religious employer exemption of these statutes did not apply to it (Health & Saf. Code, § 1367.25, subd. (b); Ins. Code, § 10123.196, subd. (d)). The trial court denied plaintiff's motion for a preliminary injunction pending trial. (Superior Court of Sacramento County, No. 00AS03942, Joe S. Gray, Judge.)

The Court of Appeal denied plaintiff's petition for a writ of mandate. The court held that the trial court properly denied plaintiff's request for a preliminary injunction, since it was not reasonably probable that plaintiff's action would prevail on the merits. Health and Safety Code section 1367.25, and Insurance Code section 10123.196, which were enacted to eliminate discriminatory insurance practices that had undermined the health and economic well-being of women, are otherwise valid laws that are generally applicable and neutral with respect to religion. Accordingly, strict scrutiny did not apply, and the incidental effect that these statutes had on the religious beliefs of plaintiff did not violate either the federal or state free exercise clause (U.S. Const., 1st Amend.; Cal. Const., art. I, § 4) or any other constitutional provision. The religious exemption in these statutes (Health & Saf. Code, § 1367.25; subd. (b), Ins. Code, § 10123.196, subd. (d)) was sect-neutral and was not designed to burden only plaintiff's religion. Accordingly, the exemption was not subject to a strict scrutiny analysis. The religious employer exemption in these statutes was constitutional under the appropriate three-pronged test: the statutes have a secular purpose, they do not advance or inhibit religion, and they do not foster excessive government entanglement with religion. (Opinion by Scotland, P. J., with Morrison and Callahan, JJ., concurring.)

Catholic Charities of Sacramento, Inc. v. Superior Court.

- (b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court;

I am aware of two cases where I have been reversed. One was a court trial I did as a Superior Court Judge; the other was a case I authored while on the Court of Appeal. There may be some criminal sentences that were remanded for a minor correction even though the judgment was otherwise affirmed. I would have no way of identifying such cases. Also, there may be some rulings from civil law and motion which required correction. I am not aware of any, but I have no way of tracking all law and motion rulings that I made while on the trial bench. The two reversals are:



1. Beck Development Co., Inc. v. Southern Pacific Transportation Company, San Joaquin County Superior Court No. 200393  
Court of Appeal, Third Appellate District, No. C015216 and No. C015905  
(The two cases were consolidated. I handled No. C015216 and another judge handled No. C015905)  
44 Cal. App.4<sup>th</sup> 1160

#### SUMMARY

A development company brought an action against the State Department of Toxic Substances Control, a city, and a railroad company, seeking damages and declaratory and writ relief. The development company had purchased property in 1985 in order to subdivide and develop it for residential purposes, but was inhibited from doing so by the department and the city due to subsurface oil contamination caused by the railroad company prior to 1945. The development company had entered into a contract with the department and agreed to pay for investigation and evaluation of the contamination, but eventually demanded a hearing. The department instead advised the city to impose a moratorium on development of the property and refused to take further action.

Accordingly, the city refused to consider the company's application for approval of a tentative subdivision map. The trial courts, in bifurcated trials, granted a writ of mandate compelling the department to accord the development company a public hearing on whether its property should be designated hazardous waste property (Health and Safety Code, 25220 et seq.), ruled that the city did not have to accept and consider the development company's application for approval of a tentative subdivision map, and ruled against the railroad company for abatement of a nuisance and incidental damages of \$1,205,613.18 (Superior Court of San Joaquin County, No. 200393, Consuelo Maria Callahan and Michael N. Garrigan, Judges).

The Court of Appeal modified the judgment granting a writ of mandate to direct the department to make a reasonably prompt determination and then to either issue a no-known-hazard statement or proceed with hearing procedures, as required by the determination it would make, and affirmed that judgment as so modified; the court also reversed the judgment in favor of the city and remanded to the trial court with directions to issue a judgment granting declaratory relief in favor of the development company, and reversed the judgment in favor of the development company and against the railroad company and remanded to the trial court with directions to enter judgment in favor of the railroad company. The court held that the trial court properly issued a writ of mandate directing the department to conduct a public hearing on whether the property should be designated hazardous waste property. In order to

comport with requirements of due process appropriate to the department's quasi-judicial action in restricting the use of the company's property, the moratorium option utilized by the department, which guaranteed none of the appropriate due process procedural safeguards, could only be construed as a temporary measure; the property owner was entitled to a full hearing with procedural safeguards. The court further held that the company was not entitled to specific performance of its agreement with the department. In addition, the court held that the trial court erred when it ruled for the city, as the city was required to follow the statutorily mandated procedures by which the Legislature has carefully preserved procedural safeguards for affected parties, and multiple means and opportunities were available to the city to protect the public health and safety. The court also held that the trial court's findings did not support the judgment for plaintiff against the railroad company, since the court's finding that neither side adequately characterized or tested the site was a finding of a failure of proof that had to be held against plaintiff who bore the burden of proof.

The court further held that the trial court's findings in plaintiff's action against the railroad company that the oil contamination of the property constituted a nuisance per se, a public nuisance, and a private nuisance, which was continuing rather than permanent, were all legally insupportable. (Opinion by Sparks, Acting P.J., with Davis and Scotland, JJ., concurring.)

2. Hoechst Celanese Corporation v. Franchise Tax Board.  
Court of Appeal, Third Appellate District, C030702  
Supreme Court of California No. S085091  
25 Cal.4<sup>th</sup> 508

#### SUMMARY

Plaintiff was an out-of-state corporation that conducted business operations and filed franchise tax returns in California. Plaintiff divided the assets of a pension plan it had funded for its employees among two newly created pension plans. Assets from one of the successor plans was used to purchase annuities to meet that plan's obligations. The surplus assets in that plan were placed in plaintiff's general fund for general corporate purposes. Plaintiff contended it did not have to allocate any of the reverted income from the surplus assets to California as business income. The Supreme Court found the income from the reversion was apportionable business income in California under Cal. Rev. & Tax Code 12150(a). The statutory definition of business income under 12150(a) established separate transactional and functional tests for business income. Plaintiff's reversion of surplus pension plan assets met the functional test and was therefore business income. Subjecting the apportionable share of

the reverted pension plan assets to taxation in California did not violate the federal due process or commerce clauses. Judgment of the appellate court was reversed as the reverted pension plan assets were business income and taxable in California.

- (c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

1. In re Charles T. (2002) 102 Cal.App.4th 869.

#### SUMMARY

The juvenile court entered orders terminating a mother's parental rights and freeing her son for adoption. During the course of the proceedings, the son was represented by counsel appointed by the court, but the court never appointed a guardian ad litem for him, and the mother never objected. (Superior Court of Sacramento County, No. JD216982, Susan L. Aguilar, Referee.)

The Court of Appeal affirmed. The court held that the mother had standing to attack the failure to appoint a guardian ad litem, and that while she might have waived the issue by failing to object in the juvenile court, the issue was an important one that merited being resolved on appeal.

The court further held that the juvenile court, in failing to appoint a guardian ad litem, did not violate Welfare and Institutions Code section 326.5 (Judicial Council must adopt rule complying with requirement of Child Abuse Prevention and Treatment Act (42 U.S.C. § 5101 et seq.) for appointment of guardian ad litem). The court held that Congress intended only that an individual who is independent of the other parties and has the legal knowledge and experience to be found in an attorney or is a trained special advocate volunteer, be appointed to represent the minor's interests. By requiring legal counsel or in some cases a special advocate (Cal. Rules of Court, rule 1438), California has gone beyond Congress's minimum requirements. In most cases, counsel can properly act as a dependency guardian ad litem. Where counsel discovers interests of the minor that might result in separate adversarial proceedings, the juvenile court must appoint a separate guardian ad litem. The court further held that California Rules of Court, rule 1438, satisfies the direction of Welfare and Institutions Code section 326.5, to comply with Congress's requirements. (Opinion by Callahan, J., with Scotland, P. J., and Nicholson, J., concurring.)

In re Charles T. 102 Cal.App.4th 869 (Cal.App.3.Dist.,2002).

2. People v. Carmony (2002) 99 Cal.App.4th 317.  
Review denied August 28, 2002.

#### SUMMARY

Defendant, who had been sentenced to prison after being convicted of sexual offenses against minors and was scheduled for release on parole, became the subject of proceedings under the Sexually Violent Predators Act (SVPA; Welf. & Inst. Code, § 6600 et seq.). At the time of his convictions, he had been determined not to be a mentally disordered offender. In the SVPA proceedings, the trial court admitted two psychological evaluations that were based on interviews with defendant and that supported a finding that defendant was a sexually violent predator. Defendant's expert disagreed with those evaluations. The trial court found beyond a reasonable doubt that defendant was a sexually violent predator. (Superior Court of Sacramento County, No. 61422, Morrison C. England, Jr., Judge.)

The Court of Appeal affirmed. It held that litigation of the issue of defendant's mental health was not barred by the doctrine of collateral estoppel, despite the earlier determination that he was not a mentally disordered offender. The different purposes and procedural settings of the Mentally Disordered Sex Offenders Act (former Welf. & Inst. Code, § 6300 et seq.) and the SVPA required litigation of defendant's current mental condition in the SVPA proceedings.

The court further held that the trial court did not err in admitting the two psychological reports that became the basis for the SVPA petition, even though defendant received no advance notice that he was being evaluated as a sexually violent predator and did not have assistance of counsel before proceeding with the interviews. The transfer of a prison inmate to a mental hospital for involuntary treatment is a deprivation of liberty that requires due process protection appropriate to the circumstances. However, nothing in the SVPA suggests that the Legislature intended to require notice or representation by counsel before the petition is requested or filed, and due process does not require such notice or representation. (Opinion by Callahan, J., with Scotland, P. J., and Davis, J., concurring.)

People v. Carmony 99 Cal.App.4th 317 (Cal.App.3.Dist.,2002).

3. Howard Jarvis Taxpayers Ass'n. v. City of Roseville (2002)  
97 Cal.App.4th 637.

#### SUMMARY

A taxpayers association and related parties filed an action against a city, alleging that an "in-lieu franchise fee" of 4 percent imposed by the city on the annual budgets of each of the city's utilities (water, sewer, and refuse collection), paid by the utility ratepayers and transferred to the city's general fund, violated Proposition 218 (Cal. Const., art. XIII D), which requires voter approval of local government property-related assessments, fees, and charges. The trial court entered summary judgment for plaintiffs. (Superior Court of Placer County, No. SCV7831, Frances A. Kearney, Judge.)

The Court of Appeal affirmed. The court held that the fee was subject to, and violated Proposition 218, specifically California Constitution, article XIII D, section 6, subdivision (b), which provides that fee or charge revenues may not exceed what it costs to provide fee or charge services, and that no fee or charge may be imposed for general governmental services. The in-lieu franchise fee did not comply with either of these requirements. (Opinion by Davis, J., with Scotland, P. J., and Callahan, J., concurring.)

Howard Jarvis Taxpayers Ass'n v. City of Roseville  
97 Cal.App.4th 637 (Cal.App.3.Dist.,2002).

4. Lovejoy v. AT&T Corp. (2001) 92 Cal.App.4th 85.  
Rehearing denied October 5, 2001.

#### SUMMARY

The operator of a business brought a fraud action against the telephone carrier company that had terminated both his long-distance service and the toll-free service he used for his business after plaintiff disputed the long-distance charges on his bill. Plaintiff alleged that the telephone company with which he had originally contracted for the toll-free service had transferred his service to defendant based on defendant's false representation that plaintiff had authorized this transfer, and that defendant hid the charges for plaintiff's toll-free number service in plaintiff's long-distance bill. Plaintiff further alleged that he was unaware of both the transfer and of the termination of his toll-free number service, and that he lost his business, filed for bankruptcy, and suffered emotional distress.

The trial court denied defendant's motion for summary judgment, finding that plaintiff's action was not barred by the filed rate doctrine, but

granted defendant's motion for judgment on the pleadings and dismissed plaintiff's complaint. (Superior Court of Shasta County, No. 0133545, Richard A. McEachen, Judge.)

The Court of Appeal reversed and remanded to the trial court with directions to deny defendant's motion for judgment on the pleadings and for further proceedings. The court held that the trial court erred in granting defendant's motion for judgment on the pleadings. The court further held that, even though plaintiff failed to plead affirmative fraud, having failed to plead the element of reliance, since he was totally unaware of the misrepresentation, plaintiff adequately pleaded a valid cause of action for fraudulent concealment. A complete proximate cause relationship between defendant's concealment of a material fact and plaintiff's damage was readily deducible from the complaint. The court further held that the trial court did not err in denying defendant's motion for summary judgment, since compensating plaintiff for the tortious conduct pleaded would not contravene the filed rate doctrine. If proved, awarding damages for this conduct would fall within the savings clause of the Federal Communications Act (47 U.S.C. § 414), which permits state law actions against carriers that do not frustrate the act's purposes of uniformity and agency rate making. (Opinion by Callahan, J., with Nicholson, Acting P. J., and Raye, J., concurring.)

Lovejoy v. AT&T Corp. 92 Cal.App.4th  
85 (Cal.App.3.Dist.,2001).

5. People v. Leonard (2000) 78 Cal.App.4th 776.  
Review denied June 21, 2000.

#### SUMMARY

The trial court ordered that defendant be committed to a state hospital after a jury found true the allegation that he was a sexually violent predator within the meaning of the Sexually Violent Predators Act (Welf. & Inst. Code, §§ 6600-6609.3). During the proceedings, the trial court denied defendant's motion to appoint new counsel to replace his current appointed counsel. The trial court allowed psychologists who testified as expert witnesses to rely on material from previous interviews with defendant, and it allowed the district attorney to call defendant as a witness at trial. The trial court also modified the jury instruction defining a sexually violent predator to omit the reference to determinate sentencing. (Superior Court of Placer County, No. 0444, Larry D. Gaddis, Judge.)

The Court of Appeal affirmed. The court held that the trial court did not violate defendant's constitutional and statutory rights to counsel when it denied his motion to appoint new counsel to replace his current appointed counsel.

The trial court expressly found that defendant had vented all his concerns, and the lengthy discussion was sufficient to show that defendant's unhappiness with counsel was not based on his competence as an attorney. The court also held that there was no abuse of discretion or due process violation in the trial court's determination that defendant's lack of representation during jury selection was voluntary. The trial court admonished defendant on self-representation, and he decided to proceed without counsel. The court further held that the trial court did not deny defendant his constitutional right to remain silent by allowing the psychologists who testified as expert witnesses to rely on material from interviews he allegedly gave under duress, and allowing the district attorney to call him as a witness at trial, since proceedings under the act are not criminal within the meaning of the United States Constitution, 5th Amendment, guaranty against compulsory self-incrimination. The court further held that the trial court did not err in modifying the jury instruction. (Opinion by Callahan, J., with Blease, Acting P. J., and Morrison, J., concurring.)

People v. Leonard 78 Cal.App.4th 776 (Cal.App.3.Dist.,2000).

6. Trinkle v. California State Lottery (1999) 71 Cal.App.4th 1198.  
Review denied June 23, 1999.

#### SUMMARY

After the lottery games of Keno and Scratchers were ruled illegal, a vending machine operator brought an action against the California State Lottery (CSL), alleging that CSL engaged in unfair business competition under the Unfair Competition Act (UCA) (Bus. & Prof. Code, § 17200 et seq.) by operating Keno and Scratchers games that diverted patrons' funds from plaintiff's machines. The trial court sustained CSL's demurrer without leave to amend and entered a judgment of dismissal. (Superior Court of Sacramento County, No. 97AS05355, John R. Lewis, Judge.)

The Court of Appeal affirmed. The court held that since there is no statute making public entities such as CSL liable under the Unfair Competition Act, the general rule of governmental immunity prevailed. The trial court's ruling was also proper on the ground that a state agency such as CSL is not a person within the meaning of the UCA, as defined in Business and Professions Code section 17201. Although under Government Code section 815.2, a public entity may be liable for the acts of its employees if those acts are not otherwise immune from liability, the complaint did not identify any conduct by CSL employees that was not immune from liability. Finally, the facts pleaded in the complaint were not

susceptible of amendment to state a cause of action for public nuisance. (Opinion by Callahan, J., with Scotland, P. J., and Morrison, J., concurring.)

Trinkle v. California State Lottery 71 Cal.App.4th 1198 (Cal.App.3.Dist.,1999).

7. Jahr v. Casebeer (1999) 70 Cal.App.4th 1250.  
Review denied May 12, 1999.

#### SUMMARY

Local voters submitted a proposed initiative to amend a county ordinance establishing compensation for members of the county board of supervisors. County counsel filed an action seeking a declaration that the proposed initiative was unconstitutional. The trial court granted the relief sought by county counsel, finding that the language of California Constitution, article XI, section 1, subdivision (b) (county powers; "each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum"), and decisional law compelled the conclusion that the proposed initiative was unconstitutional. (Superior Court of Shasta County, No. 133713, Carroll A. Ragland, Commissioner.)

The Court of Appeal affirmed. The court held that the proposed initiative was not permitted by California Constitution, article XI, section 1, subdivision (b). The language of article XI, section 1, subdivision (b), clearly authorizes voters to challenge supervisors' salaries by referendum, but it does not suggest the California electorate intended to grant local voters initiative power for this purpose when they approved the constitutional amendment in 1970. The term "governing body" does not include "voters," but rather, refers to a local legislative body. Moreover, the right of initiative could not be implied where article XI, section 1, subdivision (b), adequately protects citizens' interests by way of referendum, and where voters may express their displeasure with supervisors at the ballot box. The legislative history and subsequent legislative action also supported the conclusion that the initiative was unconstitutional. A court need not imply the right to initiative where the right to referendum is expressly stated. The two powers are not corollary in all circumstances. Also, since the Legislature may bar local initiatives in matters of statewide concern, such as the process through which supervisor salaries are established, the California electorate may do so by way of constitutional amendment. (Opinion by Callahan, J., with Davis, Acting P. J., and Nicholson, J., concurring.)

Jahr v. Casebeer 70 Cal.App.4th 1250 (Cal.App.3.Dist.,1999).



8. Sunrise Retirement Villa v. Dear (1997) 58 Cal.App.4th 948.  
Review denied January 14, 1998.

#### SUMMARY

In 1986 a county assessor determined that there had been a change in ownership on property owned by plaintiffs to trigger a new "base year" for purposes of property valuation under California Constitution, article XIII A. The determination triggered a supplemental assessment and was reflected in valuations for succeeding years. In 1994 plaintiffs discovered facts that they claimed showed the assessor had erred in determining that ownership had changed, and, after failing to persuade the assessor, plaintiffs filed an appeal with the county assessment appeals board to change the assessment. The board ruled it had no jurisdiction because the application was filed more than four years after the assessor re-determined the base-year value (Rev. & Tax. Code, § 80, subd. (a)(3)). Plaintiffs thereafter filed a petition for writ of mandate, asking that the court either (1) direct the assessor to correct its 1986 base-year value to reflect no change in ownership, or (2) compel the board to set aside its order denying the application for lack of jurisdiction and set the matter for a hearing on the merits. The trial court granted the first prayer for relief. (Superior Court of Placer County, No. SCV-4408, James L. Rowdier, Judge.)

The Court of Appeal reversed and remanded, directing the trial court to enter a new judgment issuing a peremptory writ of mandate directing the board to vacate its decision denying plaintiffs' appeal on jurisdictional grounds, and to hear the appeal on its merits. The court held that while it is true that Revenue and Taxation Code section 80, subdivision (a)(3), on its face, imposes a four-year time limit on appealing base-year reassessments, the categorical language of Revenue and Taxation Code section 51.5 evinces a clear intent to remove any and all time restrictions on correcting nonjudgmental errors in determining base-year values: "Notwithstanding any other provision of the law," nonjudgmental errors "shall be corrected in any assessment year in which the error or omission is discovered." The statutes must be read together to achieve a result that is reasonable and practical and comports with the apparent intention of the Legislature. Since the purpose of Revenue and Taxation Code section 51.5 is to remove any time limits on correcting the roll based on nonjudgmental errors, reading a statute of limitations back into the law would run contrary to the express wording of the statute. Revenue and Taxation Code section 51.5 provides an independent mechanism for correcting base-year values apart from the normal appeals procedure. The court held that this substantive change in the law superseded any statutory time restriction on the taxpayer's right to a

correction in the tax roll that otherwise might apply. (Opinion by Callahan, J., with Raye, Acting P. J., and Sparks, J., [FN\*] concurring.)  
(FN\* Retired Associate Justice of the Court of Appeal, Third District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

Sunrise Retirement Villa v. Dear 58 Cal.App.4th 948  
(Cal.App.3.Dist.,1997).

9. Seegmiller v. County of Nevada (1997) 53 Cal.App.4th 1397.

#### SUMMARY

A taxpayer whose business property was located in the taxing county as of the statutory assessment lien date sought a partial refund of ad valorem property taxes for the period after he relocated to another state during the next fiscal tax year. The county denied the refund, and the trial court sustained the county's demurrer without leave to amend and dismissed the taxpayer's action against it. (Superior Court of Nevada County, No. TS96/384, C. Anders Holmer, Judge. [FN\*] )  
(FN\* Judge of the Nevada Municipal Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

The Court of Appeal affirmed. The court held that the county's right to the taxes became fixed as of the lien date of the fiscal year to which they related (Rev. & Tax. Code, § 2192). The tax lien date is simply a practical method for determining that the taxpayer enjoyed the benefit of governmental services during the year preceding the assessment. The fact that the county permitted the taxpayer to pay the taxes in a subsequent fiscal year did not mitigate the fact that he was subject to the opportunities, benefits, and protection afforded by the county and the state during the year in which the tax was assessed. Accordingly, due process did not require any proration. No commerce clause violation occurred since the taxpayer's business was not an interstate operation. Also, since personal property continuously in interstate transit, unlike stationary property with a permanent home, has multiple tax situs in any given year, requiring apportionment as a matter of constitutional imperative for such property, but not the taxpayer's property, did not violate the taxpayer's right to equal protection. (Opinion by Callahan, J., with Puglia, P. J., and Sims, J., concurring.)

Seegmiller v. County of Nevada 53 Cal.App.4th 1397  
(Cal.App.3.Dist.,1997).

10. Connerly v. State Personnel Bd. (2001) 92 Cal.App.4th 16.

#### SUMMARY

The Governor brought an action challenging five statutory affirmative action programs as violative of equal protection principles and Proposition 209 (Cal. Const., art. I, § 31). The statutes in question were Government Code section 8880.32 (State Lottery Commission), Government Code section 16850 et seq. (sale of state bonds), Government Code section 19790 et seq. (state civil service), Education Code section 87100 et seq. (community colleges), and Public Contract Code section 10115 et seq. (state contracting). A private citizen was permitted to join the lawsuit, and he continued the litigation after the Governor left office. The trial court found invalid a portion of the statutory scheme relating to the sale of bonds and all of the statutory scheme applicable to state contracting, but otherwise rejected plaintiff's constitutional challenges. (Superior Court of Sacramento County, No. 96CS01082, Lloyd Connelly, Judge.)

The Court of Appeal reversed and remanded to the trial court with directions to enter a judgment consistent with the Court of Appeal's conclusions. The court held that under taxpayer and citizen standing rules, the private citizen had standing to maintain the suit. It held that the statutory scheme applicable to the state lottery was invalid, and that the scheme applicable to the sale of government bonds was also invalid, but that a portion of the data collection and reporting requirements of that scheme was severable and could be upheld. The court further held that the statutory scheme applicable to the state civil service was partially invalid, but that the remainder of the scheme could be severed and upheld. The statutory scheme applicable to the community colleges was invalid, the court held, and a portion of the data collection and reporting requirements of the scheme relating to state contracting was severable from the invalid portions and could be upheld. (Opinion by Scotland, P. J., with Morrison and Callahan, JJ., concurring.)

Connerly v. State Personnel Bd. 92 Cal.App.4th 16  
(Cal.App.3 Dist., 2001).

11. Catholic Charities of Sacramento, Inc. v. Superior Court (2001)  
90 Cal.App.4th 425, review granted September 26, 2001 (S099822).

#### SUMMARY

A religion-based social services corporation filed an action against the state seeking declaratory and injunctive relief, challenging the constitutionality of state statutes that require employers that provide health insurance prescription coverage to include coverage for contraceptives

(Health & Saf. Code, § 1367.25; Ins. Code, § 10123.196). Because plaintiff provided social services without regard to religious affiliation and the majority of its employees did not subscribe to its religious tenets, the religious employer exemption of these statutes did not apply to it (Health & Saf. Code, § 1367.25, subd. (b); Ins. Code, § 10123.196, subd. (d)). The trial court denied plaintiff's motion for a preliminary injunction pending trial. (Superior Court of Sacramento County, No. 00AS03942, Joe S. Gray, Judge.)

The Court of Appeal denied plaintiff's petition for a writ of mandate. The court held that the trial court properly denied plaintiff's request for a preliminary injunction, since it was not reasonably probable that plaintiff's action would prevail on the merits. Health and Safety Code section 1367.25 and Insurance Code section 10123.196, which were enacted to eliminate discriminatory insurance practices that had undermined the health and economic well-being of women, are otherwise valid laws that are generally applicable and neutral with respect to religion.

Accordingly, strict scrutiny did not apply, and the incidental effect that these statutes had on the religious beliefs of plaintiff did not violate either the federal or state free exercise clause (U.S. Const., 1st Amend.; Cal. Const., art. I, § 4) or any other constitutional provision. The religious exemption in these statutes (Health & Saf. Code, § 1367.25; subd. (b), Ins. Code, § 10123.196, subd. (d)) was sect-neutral and was not designed to burden only plaintiff's religion. Accordingly, the exemption was not subject to a strict scrutiny analysis. The religious employer exemption in these statutes was constitutional under the appropriate three-pronged test: the statutes have a secular purpose, they do not advance or inhibit religion, and they do not foster excessive government entanglement with religion. (Opinion by Scotland, P. J., with Morrison and Callahan, JJ., concurring.)

Catholic Charities of Sacramento, Inc. v. Superior Court.

17. **Public Office, Political Activities and Affiliations:**

- (a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

None.

- (b) Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

18. **Legal Career:** Please answer each part separately.

- (a) Describe chronologically your law practice and legal experience after graduation from law school including:
- (1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;
- I did not serve as a clerk to a judge.
- (2) whether you practiced alone, and if so, the addresses and dates;
- I have never practiced law alone.
- (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

City of Stockton  
City Attorney's Office  
425 N. El Dorado Street  
Stockton, California 95202  
Law Clerk  
8/75 to 11/75

City of Stockton  
City Attorney's Office  
425 N. El Dorado Street  
Stockton, California 95202  
Deputy City Attorney  
12/75 to 2/76

San Joaquin County  
District Attorney's Office  
222 E. Weber Avenue, Room 202  
Stockton, California 95202  
Deputy District Attorney/Supervisory District Attorney  
2/76 to 8/86

- (b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

The general character of my law practice, prior to joining the Bench, was criminal. I was employed as a Deputy District Attorney for San Joaquin County from 1976 to 1986. In this capacity I prosecuted major felonies including, but not limited to, homicide, sexual assault and child abuse cases.

I was employed as a Deputy City Attorney and a Law Clerk for the City of Stockton, City Attorney's Office, from 8/75 to 2/76. In this capacity I functioned as the legal advisor to various departments within the City of Stockton. My primary duties involved doing legal research on City issues, advising and counseling clients on legal ramifications, and handling any resultant court hearings.

While in law school, I worked for the Sacramento County Public Defender's Office as a law clerk from 6/74 to 5/75. In this position, I did legal research, interviewed clients, evaluated cases, negotiated cases with the District Attorney's Office, and handled court calendars.

- (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

As a Deputy District Attorney, my client was the People of the State of California.

As a Deputy City Attorney, my client was the City of Stockton, with primary responsibility to the Civil Service Commission and "Manpower," a city organization charged with the responsibility of monitoring federal funds.

While working for the Sacramento County Public Defender's Office, my clients were indigent persons charged with criminal offenses.

Prior to leaving the San Joaquin County District Attorney's Office, I was a Supervisory District Attorney supervising the Child Abuse Sexual Assault and the Career Criminal Units. In these positions, I developed an expertise in the prosecution of child abuse and sexual assault cases and the prosecution of career criminals.

- (c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

As a former prosecutor, I appeared in court on nearly a daily basis. Approximately 90% of my cases involved jury trials. In some instances, defendants would waive their right to have a jury trial and would agree to a court trial.

As a former Deputy City Attorney, I appeared monthly in administrative hearings for the Civil Service Commission. As well, I appeared occasionally in Municipal Court handling civil matters.

- (2) Indicate the percentage of these appearances in

- (A) federal courts; 0%
- (B) state courts of record; 99%
- (C) other courts. 1%

- (3) Indicate the percentage of these appearances in:

- (A) civil proceedings; 1%
- (B) criminal proceedings. 99%

These percentages pertain to my experience as a practicing attorney prior to my appointment to the Superior Court and Appellate Court Bench.

- (4) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.

Approximately 60 criminal cases. I handled these trials as the sole counsel (Deputy District Attorney).

- (5) Indicate the percentage of these trials that were decided by a jury.

Approximately 90%.

- (d) describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

I have never had the privilege of appearing before the United States Supreme Court.

- (e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

Prior to my appointment to the Bench, I was a member of the San Joaquin County District Attorney's Office in Stockton, California. As a Deputy District Attorney, I developed an expertise in the area of child abuse and sexual assault. In that capacity, I devoted my time, free of charge, to organizations or individuals interested in addressing this serious problem. Primarily, my time was spent providing training and education to the public, various organizations, and other interested groups.

I have given presentations and provided training to the Women's Center of San Joaquin County; administrators, teachers, and staff members of the Stockton Unified School District; sworn and non-sworn members of the San Joaquin County Sheriff's Department; and I have been a "guest lecturer" in several community college courses in Stockton, California.

As a Deputy District Attorney, I devoted my time and services to the San Joaquin County Victim-Witness Unit and assisted this unit in establishing a "Victim-Witness Mobile Unit" Program. This Mobile Unit Program won a Governor's award for its accomplishments.

I have worked individually to assist crime victims. Specifically, I assisted the Beatrice Mendez family in effecting the return of murdered members of their family to California from Mexico. This involved a complicated situation wherein members of the family were murdered in Mexico, and the Mexican Government refused to return the bodies of the murdered family members. Ultimately the bodies were returned to the family in California.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:



- (a) the citations, if the cases were reported, and the docket number and date if unreported;
- (b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
- (c) the party or parties whom you represented; and
- (d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

The ten litigated matters were cases that I prosecuted while in the San Joaquin County District Attorney's Office. All cases were tried in the San Joaquin County Superior Court which is located at 222 E. Weber Avenue, Stockton, California, 95202. I was the sole prosecutor in all cases; I represented the People of the State of California in each of the cases. In all cases, the defendants were convicted. The cases were tried from 1981 to 1986. Because the cases were tried approximately twenty years ago, records are on microfiche or in storage. I ordered files from storage and visited the San Joaquin County Courts to review records and have provided the most accurate information available.

1. People v. Arthur Jackson  
 SC 32619, SC 32621, and SC 32665  
 1981 to 1983  
 Hon. Duane Martin (Retired) San Joaquin County Superior Court  
 Hon. K. Peter Sifers San Joaquin County Superior Court  
 Douglas Jacobsen, Attorney at Law  
 7574 Shoreline Drive  
 Stockton, California 95219  
 209.952.9274

This case involved a series of four different residential rapes. The issue(s) at trial included proving the defendant's identity based upon scientific evidence and eyewitness testimony. Each rape case involved the analysis of physical evidence and the extensive cross-examination of scientific witnesses. The defendant was convicted by jury trial. Because of newly discovered evidence, the defendant was granted a new trial. Upon retrial, the defendant accepted a negotiated plea settlement. During the service of defendant's prison sentence, additional evidence was discovered exonerating the defendant on at least one rape conviction. Upon discovery of this new evidence, the defendant's negotiated plea agreement was modified.

2. People v. Clyde Hoover Enge  
 SC 33844  
 1982 to 1984  
 Hon. William Dozier (Retired) San Joaquin County Superior Court  
 James Larsen, Assistant Public Defender  
 San Joaquin County Public Defender's Office  
 102 South San Joaquin Street, Room 1  
 Stockton, California 95202  
 209.468.2730

This case began as a capital murder case and involved the death qualification of a jury. The primary issue was one of identity. The facts involved the murder of a local librarian who was attacked by an unknown intruder in her home. The victim was found nude and strangled in her bathtub. The investigation focused upon the defendant after an anonymous caller identified the defendant as the murderer. A latent fingerprint lifted from the forced entry to the crime scene was then matched to the defendant. The fingerprint evidence, while important, was not dispositive of identity because of its location. In limine motions in this case were extensive because of the defendant's history of sexually assaultive behavior. The defendant had two prior sexual assaults and had previously made a statement to the Probation Department that if he were to do anything differently on his prior crime, he would have killed his victim so that she would not testify in court. There were extensive motions determining what past conduct would be admitted in the defendant's murder trial. The defendant was ultimately convicted of first degree murder and sentenced to prison for life.

3. People v. Tony Terrell Smith  
 SC 34324  
 1983 to 1984  
 Hon. Stephen Demetras San Joaquin County Superior Court  
 Marvin Marks, Attorney at Law  
 343 East Main Street  
 Stockton, California 95202  
 209.941.4813

Defendant was convicted of a series of four residential sexual assaults where all of the victims were University of the Pacific coeds. The Stockton community was on extreme alert due to nature and frequency of the attacks occurring in a university setting. I was involved in the case from the defendant's arrest. I was contacted to be present when the defendant was initially interrogated by law enforcement. The law enforcement community was shocked to learn that the defendant was a juvenile because of the sophistication and boldness of the crimes. The defendant was ultimately sentenced to 53 years in state prison. In this case, I petitioned the court to try the defendant as an adult and made a

concentrated effort, due to the gravity of the offenses, to insure that the defendant would be isolated from society until such time that recidivism would be unlikely.

4. People v. Gregory Zachary  
 SC 35125  
 1984 to 1985  
 Hon. Duane Martin (Retired) San Joaquin County Superior Court  
 Charles Henry, Deputy Public Defender  
 San Joaquin County Public Defender's Office  
 102 South San Joaquin Street, Room 1  
 Stockton, California 95202  
 209.468.2730

This case involved a series of residential rapes wherein the defendant was ultimately convicted and sentenced to approximately 20 years in state prison. The central issue was one of identity. Effective prosecution involved the use of modus operandi evidence.

5. People v. Walter Azure  
 SC 34374  
 1983 to 1984  
 Hon. Kenneth Ferguson (Deceased)  
 Roger Ross, Deputy Public Defender  
 San Joaquin County Public Defender's Office  
 102 South San Joaquin Street, Room 1  
 Stockton, California 95202  
 209.468.2730

The defendant in this case was the grandfather of the victims. He was charged with molesting his three grandchildren who ranged in age from four to nine years old. The defendant denied the molests in his trial testimony; the case turned on the credibility of the witnesses. I was faced with the difficulties of qualifying very young witnesses to testify and the dynamics of in-family molests. Two of the three victims had also been previously molested. The defense attempted to impeach the young witnesses with the fact that they had been previously molested. As well, this case made significant law on appeal in its discussion of the standard of proof required in California regarding "voluntariness" as it relates to admissibility of confessions. The defendant was convicted as charged. My recollection is that the defendant did not complete a significant sentence due to his age and ailing health.

6. People v. Kenneth Tiboni  
 SC 33879  
 1982 to 1983  
 Hon. K. Peter Sifers San Joaquin County Superior Court  
 Peter Pumphrey, Deputy Public Defender  
 San Joaquin County Public Defender's Office  
 102 South San Joaquin Street, Room 1  
 Stockton, California 95202  
 209.468.2730

The defendant was convicted of second degree murder and felony child abuse. He was sentenced to a life sentence. The defendant has been denied parole on two occasions. The murder involved the death of a two-year-old boy who died as a result of child abuse. The defendant was the mother's live-in boyfriend. The defendant did not have a significant prior record and denied both abusing and murdering the victim. At the time that the victim lapsed into unconsciousness, there were two other people present, the defendant and the victim's four-year-old sibling. The defense was that the victim's sibling inflicted the fatal injuries. The defense was rebutted by medical evidence discrediting the defendant. The medical evidence also established that the victim had been abused over a six-week period of time. Prosecution also involved a grant of immunity to the mother who was required to testify against the defendant.

- 7, 8. People v. Robert Eugene Ford and Robert Lee Jones  
 SC 32916 a & b (two separate trials)  
 1981 to 1983  
 Hon. James Darrah (Retired) San Joaquin County Superior Court  
 Hon. Duane Martin (Retired) San Joaquin County Superior Court  
 David Atkinson, Attorney at Law  
 3620 West Hammer Lane  
 Stockton, California 95219  
 209.951.8143  
 William Wallace, Attorney at Law  
 115 North Sutter Street  
 Stockton, California 95202  
 209.466.4627

The defendants in this matter were charged with the brutal sexual assault of a woman after the defendants had forced their way into the victim's home. The defendants both raped the victim; the rapes were accompanied by robbery. Prosecution was complicated because the defendants had to be tried separately since one defendant was found incompetent to stand trial, delaying his trial for a period of time. After two trials and three years, both defendants were ultimately convicted and sentenced to twenty years in prison. The defense in each trial was

one of identity. In each trial, the defense was rebutted by the victim's identification as well as other corroborating evidence. Prosecution also required granting immunity to a witness that was with the defendants immediately before and after the commission of the crimes.

9. People v. John Brecht

SC 36187

1983 to 1984

Hon. Nels B. Fransen (Retired) San Joaquin County Superior Court

Roger Ross, Deputy Public Defender

San Joaquin County Public Defender's Office

102 South San Joaquin Street, Room 1

Stockton, California 95202

209.468.2730

John Brecht was charged with various offenses relating to the sexual assault, pimping and pandering of a young female who was a runaway from a girl's detention home. Witnesses called by the prosecution were prostitutes and convicted felons. Brecht was convicted by a jury and sentenced to state prison. The defense was a general denial and an attack on the credibility of the victim and witnesses.

10. People v. Bernard Patrick Gordon

SC 35456

1985 to 1986

Hon. William Dozier (Retired)

Eric Ratner, Research Attorney

California Supreme Court

350 McAllister Street

San Francisco, California 94102

415.865.7000

Bernard Patrick Gordon and his two brothers were involved in a series of armored car robberies throughout the State of California. In two of the robberies, the suspects shot and killed the armored car guards during the robbery. Gordon and his two brothers were eventually arrested and tried in Stockton on capital murder charges stemming from one of the robbery-murders. All three defendants were tried separately. As the Deputy District Attorney assigned to the Gordon case, I handled all of the extensive law and motion and pretrial preparation. One month prior to the inception of trial, I was appointed to the bench. Bernard Gordon was tried, convicted, and sentenced to life without possibility of parole.

20. **Criminal History:** State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

I have never been convicted of any offense, nor have I ever received a traffic citation.

21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

I have been sued in my capacity as a judge along with other judicial officers. The lawsuits are:

1. Croci v. Cheadle et al.; Lawsuit brought by the San Joaquin County Marshall after he was removed from office by the judges for dereliction of duty; San Joaquin Superior Court No. 212503; dismissed March, 1996.
2. Hylton v. Puglia et al.; United States District Court No. S-97-1003; dismissed July, 1997.
3. Karen Anderson v. Don Hoverson et al.; United States District Court for the District of Columbia, No. 1:98CV00115; dismissed November, 1998.
4. Rowden v. State of California et al.; Sacramento Superior Court No. 02AS02858; dismissed September, 2002.

The lawsuits described in numbers 2, 3, and 4 above involved litigants suing judges for their decisions after an adverse ruling. All three lawsuits were dismissed, based upon judicial immunity.

22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

I will resolve any potential conflict of interest pursuant to the Code of Conduct for United States Judges.

I am unaware of any financial arrangements that are likely to present a potential conflict of interest.

My husband is a federal agent.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

See attached financial disclosure report.

25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for.

26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

No.

- (a) If so, did it recommend your nomination?

N/A

- (b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

I received a telephone call from White House Counsel's Office requesting an interview. I was interviewed by members of White House Counsel's Office, the Justice Department, and the Federal Bureau of Investigation.

- (c) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No.